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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, ET AL.,
Petitioners.

versus

SOCONY-VACUUM OIL COMPANY, INC.,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HALL ETTER,
Counsel for Petitioners.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Statement	2
Decision of the District Court	3
Decision of the Circuit Court of Appeals	4
Reasons for granting the petition	8
Prayer for writ	9
Brief in support of petition	11
Point 1. It being undisputed that petitioners were on the vessels when they called at Santa Cruz de Tenerife, a Spanish Port, and the contracts clearly provided for a Fifty ($50) Dollar bonus to each member of the crew in the event the vessels called at Spanish Ports, petitioners are entitled to recover under the contracts	11
Point 2. The contracts sued upon having been written by Respondent the provisions thereof should be construed strictly against it	16
Point 3. Acts and circumstances of March 11, 1938 involving another and different contract on other and different ships occurring some three months prior to the time the contracts in question were executed cannot and should not be considered in the construction of plain, unambiguous and clear language of the contracts sued upon, the Maritime Commission Order of September 23, 1937 not being applicable	20
Point 4. A Court sitting in Admiralty has no power or authority to reform or rescind a written contract	23
Point 5. The petition should be granted	25

AUTHORITIES.

	Page
American Lumber & Mfg. Co. v. *Atlantic Mill & Lbr. Co.* (C. C. A. Pennsylvania), 290 Fed. 632	20
Andrews v. *Essex Fire & Marine Ins. Co.*, 3 Mason 6, Fed. Cases No. 374	24, 25
Auerback v. *Mr. & Mrs. Fosters Place*, 220 N. Y. Supp. 281	15
Baltimore v. *Baltimore & Ohio Ry. Co.*, 10 Wall, (U. S.) 543, 19 L. Ed. 1043	17
Calmar S. S. Corp. v. *Chas W. Taylor*, 58 S. Ct. 641	25
Calderon v. *Atlas S. S. Co., Ltd.*, 170 U. S. 272, 18 S. Ct. 588	8, 18
Chicago Bank & Commerce v. *Craft*, 259 Ill. App. 295	20
Ennis v. *Smith*, 14 Howard 400, (U. S. S. Ct.)	15
Ferguson v. *Reed*, 45 Tex. 574	15
Gay v. *Alter*, 102 U. S. 79, 26 L. Ed. 48	23
Heid Bros. v. *Riesto*, 281 S. W. 638	15
Jones v. *U. S.* 137, U. S. 203	16
Lee v. *State Bank & T. Co.* (C. C. A. 2nd. Cir.) 54 F. (2d) 518, 85 A. L. R. 216, 288 U. S. 547, 70 L. Ed. 958, 59 S. Ct. 395	17
McDonald v. *U. S.*, 292 Fed. 593, 594	18
Marchand v. *The Samuel Marshall*, 20 Can. Exch. 299, 67 Dom. L. R. 107, 110	18
Oetjen v. *Central Leather Co.*, 246 U. S. 297	16
Pan American Petroleum & Transp. Co. v. *United States*, 273 U. S. 456; 71 L. Ed. 734, 47 S. Ct. 416	23
Phillips v. *Western Union*, 95 Tex. 628, 69 S. W. 63	18
People v. *De'Argentour*, 32 Hun. (N. Y.) 178 Aff'd. 95 N. Y. 624	15
Preston v. *Howell*, 257 N. W. 415, A. L. R. 1140	20
Red Cross Line v. *Atlantic Fruit Co.*, 264 U. S. 109, 44 S. Ct. 247	23
Ricaud v. *The American Metal Co.*, 246 U. S. 304	16
Rice v. *Charles Dreifus Co.*, 98 F. (2d) 80	23
Simmons Transp. Co. v. *Alpha Portland Cement Co.*, 286 Fed. 955	24
Smith v. *Elmer Wood Transp. Co.*, 103 Fed. 685	25
The Carbonero (Mass.), 106 Fed. 329 (C. C. A. 5th Cir.)	25

Page

The Eclipse, 135 U. S. 599, 10 S. Ct. 873, 34 L. Ed. 269 8, 24
The Glide, 72 F. 200 25
Underhill v. *Hernandez*, 168 U. S. 250 16
United States, Ex Rel., International Contracting Co. v. *Lamont*, 155 U. S. 303, 39, L. Ed. 160, 16 S. Ct. 97 17
U. S. v. *Palmer*, 3 Wheat. 610 16
United Transportation Co. v. *New York & Baltimore Ry.*, 185 Fed. 386 ..... 23, 24
Whittington v. *Cameron Compress Co.*, 280 S. W. 527 (Comm. of App.), 56 Corpus Juris, p. 932 18
Williams v. *Providence Washington Ins. Co.*, 56 Fed 159 24
Young v. *Bradley*, 101 U. S. 782, 25 L. Ed. 1044 23
Yucatan v. *Argumedo*, 92 Misc. Reps. 547, 157 NYS 219 ..... 15, 16
Zurich General Accident & Lia. Co., 22 Pac. (2d) 572, 573 20

TEXTBOOKS.

American Jurisprudence, Vol. 12, Sec. 227, p. 747 17
American Jurisprudence, Vol. 12, Sec. 236, p. 758 15
American Jurisprudence, Vol. 12, p. 1031 23
Benedict on Admiralty, Vol. 1, Sec. 70, p. 95 (Fifth Edition) 24
Benedict on Admiralty, Vol. 1, p. 128, (Sixth Edition) 24
Corpus Juris Secundum, Vol. 2, pp. 101, 102 24
Corpus Juris Secundum, Vol. 17, pp. 361, 362 20
Ruling Case Law, Vol. 21, Sec. 120, p. 561 15
Texas Jurisprudence, Vol. 10, Sec. 162, p. 277 18
Texas Jurisprudence, Vol. 17, Sec. 237, p. 572 15
Texas Jurisprudence, Vol. 33, Sec. 191, p. 647 15

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, ET AL.,
(Libellants-Appellees Below),
Petitioners.

versus

SOCONY-VACUUM OIL COMPANY, INC.,
(Respondent-Appellant Below),
Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice, and the Associate Justices, of the Supreme Court of the United States:

The petition of Clifford Collins and fifty-nine (59) other seamen, all members of the crew of the Steamships "India Arrow" and "Java Arrow," Libellants below, respectfully show as follows:

This is a petition for a Writ of Certiorari to review a decision of the Circuit Court of Appeals for the Fifth Circuit, in Admiralty, rendered December 19th, 1940, Appellees' Motion for Rehearing overruled January 14, 1941, which reversed a decree of the District Court for the Southern District of Texas, Houston Division, allowing recovery of Fifty ($50.00) Dollars each to each member of the crew

under a contract for war bonus for working on said vessels during the Spanish Civil War while the vessels entered the port of Santa Cruz de Tenerife, Canary Islands, Spain. The Circuit Court of Appeals disagreed with the District Court on all the questions of law involved, the District Court having held that the language of the contracts sued upon by libellants, appellees, was clear and unambiguous and, therefore, binding on the Respondent, whereas the Circuit Court of Appeals held the contract to be ambiguous and reformed and rescinded the contract as written by the parties. The opinion of the Circuit Court of Appeals was written by Circuit Judge Sibley and concurred in by Circuit Judge Holmes and McCord.

Statement.

On the 5th day of June, 1938, and on July 24, 1938, respectively, Libellants below joined the Steamships "India Arrow" and "Java Arrow," signing regular shipping articles fixing wages, voyages and other conditions of employment and in addition thereto on the same dates entered into contracts with the National Maritime Union, of which Libellants were members, and under which contracts it was provided that should the vessels in question call at Spanish ports, each member of the crew would be awarded Fifty ($50.00) Dollar bonus for the trip in addition to their regular wages, providing, however, that this shall last only until such time as the United States Maritime Commission cancelled similar bases applicable to government-operated ships which might call at Spanish ports. It was further provided that no bonus shall be paid unless the above-named vessels called at Spanish ports. The undisputed evidence showed that the SS "India Arrow" and SS "Java Arrow" entered the port of Santa Cruz de Tenerife in the Canary Islands off the West Coast of Africa, which was at the time a Spanish port. Upon the completion of the voyages

and return of the vessels to the United States Respondent refused to pay the war bonus of Fifty ($50.00) Dollars each to the members of the crew, stating that the port of Santa Cruz de Tenerife in the Canary Islands was not a Spanish port; and that the definition of what constitutes the War zone could be found in the United States Maritime Commission Order and the agreement with respect to the "India Arrow" and the "Java Arrow," and that the contracts sued upon were perfectly plain and unambiguous. Libellants sued for the Fifty ($50.00) Dollars to each member of the crew and penalties for failure to pay wages. The suit resulted in a decree in favor of petitioners against respondent for Fifty ($50.00) Dollars to each one of the libellants, and denied recovery for penalties under Section 596, Title 46 United States Code Annotated.

Decisions of the District Court.

The Court found as a fact that Santa Cruz de Tenerife in the Canary Islands was at that time a Spanish Port, and that all libellants were seamen on the steamships at that time. It, therefore, found the following conclusions of law:

"Conclusions of Law.

"1. There is a distinct difference between the wording of the United States Maritime Commission Order and the Agreements with respect to the "India Arrow" and "Java Arrow". The portions of the Agreements and Order which I have underscored clearly disclose this. The Order of the Maritime Commission apparently is confined solely to the *territorial waters of Spain* (in Europe), Spanish Morocco and the Balearic Islands, and the waters between the Balearic Islands and the Spanish mainland, while the Agreements respecting the "India Arrow" and the "Java Arrow", dated some eight or nine months later, were made to include *Spanish Ports.*

"I do not think the reference to the United States Maritime Commission Order has the effect of substi-

tuting the wording in that Order for the wording in the Agreements. It may be there was some reason for wording the Agreements differently from the Order. Conditions may have changed between times. The danger zone may have become enlarged. I think the Court should not lightly regard language in an agreement which is perfectly plain.

"2. I think the Court may not accept as controlling here, the action of other companies with respect to similar controversies with the Maritime Union or its members.

"3. I do not think this case calls for the Court to undertake to reform a perfectly plain contract between the parties.

"4. I do not think Libellants are entitled to the Statutory penalty under Section 596, Title 46, U. S. C. A., but are entitled to each recover the agreed bonus."

The Decision of the Circuit Court of Appeals.

In its opinion the Circuit Court of Appeals disagreed with the District Court holding that the contracts sued upon were perfectly clear and unambiguous, but on the contrary held that the words "Spanish Ports" could mean either ports in Spain or ports belonging to Spain. Therefore, considered other circumstances and other contracts and conversations held some months prior to the time the contracts sued upon were executed.

Judge Sibley said in part:

"The evidence shows without conflict that during the Spanish Civil War, on Sept. 23, 1937, the United States Maritime Commission agreed to pay a cash bonus of $50 on government operated vessels which entered danger zones in Chinese and Spansh waters, and if vessels were interned to pay wages during such delay, defining the Spanish waters meant as 'Territorial waters of Spain, Spanish Morocco and the Balearic Islands, including waters between the Balearic Islands and the Spanish mainland.' On Sept. 29, 1937, the

Export Steamship Corporation and the National Maritime Union, by M. Byne, (it being the union of which libellants are members), made a contract for a ship of that corporation, providing a $5.00 per month increase in pay and a $50 bonus and wages during internment, but the bonus was to be paid only if the ship should 'go into ports of Spain * * * until such time as the U. S. Maritime Commission cancels similar basis applicable to government operated ships which might call at Spanish ports.' On October 7, 1937, appellant was about to sail a vessel into the Mediterranean Sea, and its representative, Capt. Fiske, at New York, conferred with Howard McKenzie acting for the National Maritime Union, called his attention to the action of the Maritime Commission, and exhibited a copy of the contract between the Union and the Export Steamship Corporation, and asked if it was satisfactory to be used with the vessels of appellant, and he agreed. Fiske then dictated a contract which he thought was the same as the Export contract, but it used as to the bonus the words 'should call at Spanish ports' instead of 'going into ports of Spain.' The wording was identical otherwise. Fiske executed it for appellant and McKenzie for the Union. Without any further discussion exactly similar contracts were later executed for seven other vessels of appellant, including the two here involved. None of these vessels was intending to go into the Canary Islands and those Islands were not discussed or considered in framing any of the contracts. On March 11, 1938, one of the appellant's ships was about to sail from Boston to Santa Cruz de Tenerife, and a contract in the above form was tendered to the crew, but they refused to sign on unless a bonus was provided for. Fiske conferred with the Union, speaking with M. Byne, who seems to be the same who signed the original Export Steamship Corporation agreement, and they agreed that the bonus contract did not include Tenerife, and that the crew should sign on without a bonus for going there, and this was done. The contracts before us were signed about two months later, on June 8 and

June 17, with no notice to Fiske of any change of view or contention on the part of the Union. But Libellants proved by a representative of the Union at New Orleans that on March 22, 1938, a Union contract was signed in Texas with the American-West African Line for one of its vessels, providing a bonus of $50, if in the port port of Tenerife, or 100 miles thereof, the ship should be attacked by airplane, armed trawler, or man of war. Fiske testifies without contradiction that the contracts he made were understood to refer only to the Spanish ports in the danger zone pointed out by the Maritime Commission, and had no reference to remote islands or possessions of Spain.

"Since the American-West African contract was with another party and was altogether different in wording from those before us, and was not known to Fiske when these were made, nor considered in making them, it can throw no light on them. Yet the contracts in controversy do not stand independent and alone, but are mere repetitions as to these two ships of the original agreement made between appellant and the Union on October 7, 1937. The same form was used, with no further discussion of the terms. There is a direct reference in the contracts to the action of the Maritime Commission as to 'Spanish ports' which shows the parties intended their contract to have the same substantial scope as to the action of the Commission. The practical interpretation of the contract in the case of the ship sailing from Boston to the Canary Islands on March 11, 1938, is a powerful evidence that neither side thought the Islands included. Fiske's testimony to that effect is wholly uncontradicted.

"With the intent of the Union thus established the seamen whom it represented cannot claim a different intent. The Union and not they signed these contracts. The Union was their representative, and the contracts mean what their representative and the opposite party understood them to mean.

"The judgment is set aside in each case and one will be entered dismissing the libel at libellant's cost."

Judge Sibley was of the opinion that the libellants were not entitled to recover because on March 11, 1938, some three or four months prior to the time the contracts sued upon were entered into, one of the appellant's ships which was about to sail from Boston to Santa Cruz de Tenerife under a similar contract providing for Fifty ($50.00) Dollar war bonus in the event the vessel touched a Spanish port was turned down by the crew when they learned that respondent did not intend to pay them the bonus for this particular voyage, and that subsequent thereto when M. Byne, acting for the Union, agreed on that particular trip that the bonus contract did not include Tenerife, and another crew was signed on without a bonus for going there. Judge Sibley overlooked (first) That the contract of March 11, 1938, specifically omitted the port of Santa Cruz de Tenerife as a port the entry into which war bonus would be paid; (second) that the theatre of civil war changed and conditions changed during June, 1938; (third) That a new crew was signed on March 11, 1938, which, of course, shows that the regular crew insisted on the bonus and refused to sail unless this bonus was assured them; (fourth) The policy of the Union has been shown by their act of March 26, 1938, where another vessel bound directly for Santa Cruz de Tenerife, the Union in behalf of its membership insisted and obtained protection for its members when any vessel would enter waters or ports contiguous to Spain and its possessions. Therefore, the Circuit Court of Appeals erroneously took one instance in which the Union agreed and supplied one crew to go to Tenerife some three or four months prior to the time when the contracts sued upon were entered into as definite and inclusive evidence that the contracts did not cover Santa Cruz de Tenerife, even though it was admitted by the respondent in its answer that it was a Spanish Port.

The Reasons for Granting the Petition.

The petitioners respectfully submit that this petition should be granted for the following special reasons:

(1). This case involves questions of much importance in regard to maritime contracts generally, the result of which will affect not only the men involved in these cases but about sixty other seamen who now have similar suits pending in the District Court of the United States for the Southern District of Texas, Houston Division under exactly the same contract and with the same respondent entered into subsequent to March 11, 1938.

(2). In view of the existing international situation and the ever extending theatre of war including and affecting many ports, it becomes of paramount importance and of great public interest to determine whether simple language such as Spanish Ports includes a belligerent nation's territories, possessions and colonies or it is restricted to the continent where the central government is located.

(3) This case involves questions of much importance in regard to all contractual obligations affecting the interest of the public at large in that the Circuit Court of Appeals held a perfectly plain written contract to be ambiguous, especially so when the contract was written by respondent, and the Circuit Court of Appeals, contrary to firmly established and fundamental principles of law resolved such ambiguity in its favor.

(4) On the question whether an Admiralty Court has the power and authority to reform a maritime and perfectly plain, clear and unambiguous contract.

(5) On the question of the construction of maritime contracts this decision is in conflict with the decision of the United States Supreme Court in *The Eclipse*, 135 U. S. 599, 10 S. Ct. 875, 34 L. Ed. 629, and *Calderon* v. *Atlas Steamship Company, Ltd.*, 170 U. S. 272; 18 S. Ct. 588, as well as the

majority of the Circuit Courts of Appeal. Since *The Eclipse, supra,* this Honorable Court has not passed on the foregoing important question and the same should be settled by this Court because of its vital interest to the public at large and to all American merchant seamen directly involved.

Your petitioners present herewith a Brief and citation of authorities.

Wherefore, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the Seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit commanding the said Court to certify and send to this Court on a day certain to be therein designated a full and complete transcript of the record, and of all the proceedings of said Circuit Court of Appeals in this case which was entitled in that Court, Socony-Vacuum Oil Company, Inc., claimant of "India Arrow" and "Java Arrow", appellant, versus Clifford Collins, et al., appellees, to the end that said cause may be reviewed and determined by this Court as provided by law, and that your petitioners may have such other and further relief in the premises as to this Court may seem just, and that the said judgment of the said Circuit Court of Appeals may be reversed by this Honorable Court.

Dated, Houston, Texas, April 8, 1941.

Clifford Collins, for himself and in behalf of all the rest of the libellants below in Cause Admiralty No. 547, and Cause Admiralty No. 552, Circuit Court of Appeals, Number 9404.

By Clifford Collins.

The State of Texas,
County of Harris:

Clifford Collins, for himself and in behalf of all the rest of the libellants in the two above consolidated cases, being duly sworn, deposes and says: That he is one of the Libel-

lants in the above cause, that he has read the foregoing petition, and knows the contents thereof, and that the allegations therein are true as he verily believes.

CLIFFORD COLLINS.

Sworn to before me this 8th day of April, 1941.

ESTELLE ROBERTS,
Notary Public in and for
Harris County, Texas.

[SEAL.]

I hereby certify that I have examined the foregoing petition, and in my opinion it is well founded, and is entitled to the favorable consideration of this Honorable Court.

HALL ELLER,
Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, ET AL.,
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Petitioners,

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SOCONY-VACUUM OIL COMPANY, INC.,
(Respondent-Appellant Below),
Respondent.

BRIEF IN SUPPORT OF PETITION.

POINT ONE.

It being undisputed that the petitioners were on the vessels when they called at Santa Cruz de Tenerife, a Spanish Port, and the contract clearly provided for a fifty dollar bonus to each member of the crew in the event the vessels called at Spanish ports, petitioners are entitled to recover under the contracts.

During June and July, 1938, the Steamships "India Arrow" and "Java Arrow" owned by respondent proceeded to make a trip from ports in the United States to the ports in

the Mediterranean, Haifa, Palestine and thence to Santa Cruz de Tenerife, Canary Islands, Spain and back to the United States. At that time the prelude to the present internation conflagration was in full swing. The aggressors of today were testing their tools of war upon the soil of the Spanish Republic in order to perfect their deadly machinery they are now using in their attempt to destroy our civilization. The Spanish Civil War was of such moment and involved such danger to shipping and mariners that all steamship companies operating vessels in waters contiguous to the nations involved awarded special compensation to American merchant seamen who were employed on vessels that would either pass through territorial waters of such belligerent nations or enter into ports belonging to such belligerent nations. So widespread and notorious was the serious condition then existing that the United States Maritime Commission issued a press release as of September 23, 1937, also offording protection to seamen employed on ships *operated by it.* Respondent, a Socony-Vacuum Oil Company, Inc., owners and operators of a large fleet of seagoing tankers carrying gas, oil and its derivatives to and from ports of the United States and European ports and ports all over the world, also made trips to ports in the Mediterranean, ports in Spain, Haifa, Palestine and other ports of the world. On many occasions it was not known prior to departure whether the vessels would enter Spanish ports or not, so in order to meet such contingency in the event of any change of schedule while the vessel is en route they entered into a written contract with the National Maritime Union to which these petitioners belonged, agreeing as follows:

"June 5, 1938.

"1. Effective with the sailing of the SS India Arrow, all unlicensed personnel are to receive $5.00 increase per month in pay in lieu of accident or other special

compensation insurance for such personnel, and therefore all demands for insurance are hereby withdrawn.

"2. Effective with the sailing of the SS India Arrow the unlicensed personnel of this ship should it call at Spanish Ports, will be awarded $50.00 bonus for the trip until such time as the U. S. Maritime Commission cancels similar basis applicable to Government operated ships which might call at Spanish Ports.

"3. It is agreed that no bonus will be paid unless the SS India Arrow calls at Spanish Ports.

"4. Should the SS India Arrow operated by this Company be arrested or interned because of the war hazards the Socony-Vacuum Oil Company, Inc., Marine Transportation Department agrees to pay the crew their regular wages during the period of arrest or internment."

On June 17, 1938, exactly the same agreement was signed by the petitioners with reference to the SS Java Arrow.

During the voyages in question the SS "India Arrow" and SS "Java Arrow" called at the port of Santa Cruz de Tenerife, Canary Islands, Spain, delivering gasoline, oil and its derivatives to a refinery located there. Upon the completion of the voyages and the vessels' arrival in the United States the members of the crew of the above named vessels requested compliance with the contract hereinabove quoted in addition to their reguar wages. This request was refused them, hence this action. There are other vessels which have executed similar contracts after March 1938, all of which vessels entered the port of Santa Cruz de Tenerife, Canary Islands, Spain, and for all of whom there are now libels pending in the United States District Court for the Southern District of Texas, Houston Division, seeking recovery of the Fifty ($50.00) Dollar bonus agreed upon.

Cause No. 547 in Admiralty, *Clifford Collins, et al.* v. *SS "India Arrow"* and Cause No. 552 in Admiralty, *Mario R. Cascio, et al.* v. *SS "Java Arrow,"* in which these

petitioners were libelants, were consolidated and tried, and the District Court below, as hereinabove set out, rendered judgment in favor of Libellants, but the Circuit Court of Appeals reversed the District Court denying recovery and ordering dismissal of the libels. The remaining actions now pending in the District Court below are awaiting the disposition of this cause before this Honorable Court before proceeding to trial.

A simple reading of the contracts upon which this action is brought reveals but two questions which need be answered in order to arrive at a proper determination of this action. (1) Is Santa Cruz de Tenerife a Spanish Port or not? (2) Were Libellants members of the crew of the two vessels when the vessels called at this port? If the questions are answered in the affirmative, the libellants are entitled to their judgment. If in the negative, they are not. The evidence is undisputed that the Port of Santa Cruz de Tenerife is a Spanish Port and is so designated by the United States Hydrographic Office, and is so reported in Encyclopedias, and in this instance was so regarded by the District Court, by the Circuit Court as well as by Appellant and Appellees in the Trial Court. This being the state of the record, it seems that no further discussion is necessary. Moreover, Respondent itself admits in its Amended Answer appearing on pages 11 and 26 of the Record, paragraph 2 thereof, and on pages 13 and 28, wherein Libellants plead that the Port of Santa Cruz de Tenerife is a Spanish Port * * * It is true that Respondent claims that the words "Spanish Port" in the instrument refer to "Spanish Ports" in a general way and not in a specific sense, and is not a Spanish port within the terms of the agreement made.

However, the parol evidence rule seems to fully and completely apply to this type of a clear and unambiguous contract, i. e., that parol evidence will not be permitted to change, vary or modify the legal import of a plainly written

instrument. In construing a written contract presumption is in favor of a comprehensive interpretation rather than a restrictive one, general over a particular, and a common over an unusual sense word. *Auerback* v. *Mr. & Mrs. Fosters Place,* 220 N. Y. Supp. 281. This rule is so well established that it would be useless to point out to the Court numerous cases reiterating this simple principle of contract law. The language of the contracts sued upon is general, i. e., Spanish Ports, there being no exceptions in it, no specific port or ports set out, the words by necessity must be construed in a general sense, and by necessity include any Spanish ports. Such an interpretation is the only logical one that reasonable minds can reach. Moverover, respondent's pleading on which it went to trial, having admitted that Santa Cruz de Tenerife was a Spanish Port, libellants were entitled to a judgment on the pleading. *Ferguson* v. *Read,* 45 Tex. 574, (Writ of Error Dismissed); *Heid Bros.* v. *Riesto,* 281 S. W. 638, (Rehearing Denied); *Texas Jurisprudence, Evidence, Civil Cases,* Volume 17, page 572, Sec. 237; *Texas Jurisprudence,* Volume 33, Section 191, page 647; *Ruling Case Law,* Volume 21, Section 120, page 561; *American Jurisprudence,* Vol. 12, Sec. 236, page 758. Furthermore, the Court will take judicial knowledge of the fact that Santa Cruz de Tenerife is a Spanish Port. The Federal Courts and in general all Courts of the United States will take judicial knowledge of the existence of foreign governments, the identity of their colonies and their political dependencies, their ports of entry, etc. *Ennis* v. *Smith,* 14 Howard 400, U. S. S. Ct., wherein the Supreme Court took judicial notice that Lithuania was a Russian province governed by its own laws except as they may be modified by the emperor's edicts, *People* v. *De'Argentour,* 32 Hun. (N. Y.) 178, aff'd 95 N. Y. 624, the New York court took judicial notice that the Island of Cuba was a dependency of the Kingdom of Spain and subject to its government. In *Yuca-*

tan v. *Argumedo,* 92 Misc. Reps. 547, 157 N. Y. S. 219, the court took judicial knowledge of the port of entry of a foreign country.

The United States Supreme Court has many times reaffrmed this doctrine in the following cases:

Ricaud v. *The American Metal Co.,* 246 U. S. 304;
Oetjen v. *Central Leather Co.,* 246 U. S. 297;
Underhill v. *Hernandez,* 168 U. S. 250;
Jones v. *U. S.,* 137 U. S. 203;
U. S. v. *S. Palmer,* 3 Wheat. 610.

Since courts do take judicial notice of the nationality of ports as to whether or not they are Spanish Ports or ports of a different country, and respondent having admitted in its pleading that the port of Santa Cruz de Tenerife was a Spanish Port, petitioners herein, libellants below, were and are entitled to judgment on the pleading without the necessity of introducing any evidence on that point. The evidence, however, is ample and stands unchallenged sufficient to sustain the Court's findings on the first issue, *i. e.,* that Santa Cruz de Tenerife is a Spanish port.

POINT TWO.

The contracts sued upon having been written by respondent the provisions thereof should be construed strictly against it.

This principle of law is so clearly established that we are somewhat reluctant to present it to this Honorable Court. However, in view of the wholly unexpected view taken by the Circuit Court of Appeals we feel duty bound to point out the authorities upholding this rule.

The law furnishes certain rules for the construction of written contracts for the purpose of ascertaining from the language used in such contracts the extent to which the parties intended to be bound; but it is well established that the Court *will not resort to construction* where the intent

of the parties is expressed in *clear* and *unambiguous* language. In such circumstances the Court will enforce and give effect to the contract according to its terms, no contention having been made that there was any fraud or unfair method used when the contracts were entered into. The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties and to give effect to that intention if it can be done consistently with legal principles. Whatever may be the inaccuracy of expressions or the inaptness of the words used in an instrument in a legal view, if the intention of the parties can be clearly discovered, the Court will give effect to it and construe the words accordingly. It must not be supposed, however, that an attempt is made to ascertain the actual mental process of the parties to a particular contract. The law presumes that the parties understood the import of their contract and that they have the intention which its terms manifest.

United States, ex rel, International Contracting Company v. *Lamont,* 155 U. S. 303; 39 L. Ed. 160, 16 S. Ct. 97;

Baltimore v. *Baltimore & Ohio Ry. Co.,* 10 Wall (U. S.) 543, 19 L. Ed. 1043;

Lee v. *State Bank & T. Co.* (C. C. A. 2nd. Circuit), 54 Fed. (2d) 518; 85 A. L. R. 216 (Writ of Certiorari Denied) 288 U. S. 547, 76 L. Ed. 958, 59 S. C. 395;

American Jurisprudence, Volume 12, Sec. 227, p. 747.

The entire record in those cases speak clearly that the parties were aware of a civil war existing within the Republic of Spain and its possessions. Because of the unusual circumstances respondent agreed to pay to petitioners the sum of Fifty ($50.00) Dollars each in the event the vessels called at Spanish Ports. From the contracts entered into there can be no doubt that the parties meant exactly what they said, *i. e.,* Spanish Ports. If respondent had some secret intention, or secret idea which it kept to itself,

regarding the meaning of Spanish Ports that certainly could not be controlling in the interpretation or construction of the contracts. It is not to be forgotten that respondent wrote the contracts and, therefore, it is to be construed strictly against it, since it chooses its own language, 10 *Texas Jurisprudence,* Sec. 162, p. 277; *Phillips* v. *Western Union,* 95 Tex. 628, 69 S. W. 63; *Whittington* v. *Cameron Compress Co.,* 280 S. W. 527, (Com. of App.); 56 *Corpus Juris,* page 932; *McDonald* v. *U. S.,* 292 Fed. 593, 594; *Marchand* v. *The Samuel Marshall,* 20 Can. Exch. 299, 67 Dom. L. R. 107, 110.

The United States Supreme Court in the case of *Calderon* v. *Atlas Steamship Company, Ltd.,* 170 U. S. 272; 18 S. Ct. 588, in reversing the Decree of the District Court and that of the Circuit Court of Appeals stated as follows with reference to the construction of contracts:

> "The plain and unequivocal meaning of these words is that the carriers shall not be liable to any amount for goods exceeding in value $100.00 per package. It is true that contracts for the carriage of goods by water, as well as by land, frequently contain a provision limiting the liability of the carrier to a certain amount, usually $100.00 per package, and it was apparently in view of this custom that the Courts below gave a like interpretation to the words of this stipulation. But this certainly does violence to its language. If it had been intended to so limit the respondent's liability, it would have been easy to say so, and the very fact that different language was used from that ordinarily employed indicates a desire on the part of the carrier to limit his liability to goods which are of less value than $100.00 per package. It is possible that the draughtsman of this bill of lading may have had the more common limitation in his mind, and may have intended that the carrier should incur a liability upon all goods to the extent of $100 per package, but he certainly was unfortunate in the language he chose for that purpose.
> • • •

"It is true that in cases of ambiguity in contracts, as well as in statutes, courts will lean towards the presumed intention of the parties or the legislature, and will so construe such contract or statute as to effectuate such intention; but *where the language is clear and explicit there* is no call for construction and this principle does not apply. Parties are presumed to know the force and effect of the language in *which they have chosen to embody their contracts,* and to refuse to give effect to such language might result in artfully misleading others who had relied upon the words being used in their ordinary sense. In construing contracts, words are to receive their plain and literal meaning, *even though the intention of the party drawing the contract may have been different from that expressed. A party to a contract is responsible for ambiguity in his own expressions,* and has no right to induce another to contract with him on the supposition that his words mean one thing while he hopes the court will adopt a construction by which they would mean another thing more to his advantage. Clark, Cont. p. 593.

"In this case the contract is one prepared by the respondent itself for the general purpose of its business. *With every opportunity for a choice of language,* it used a form of expression which clearly indicated its desire to exempt itself altogether from liability for goods exceeding $100.00 in value per package, and it has no right to complain if the courts hold *it to have intended what it so plainly expressed.* If the language had been ambiguous, we might have given it the construction contended for, which probably conforms more nearly to the clause ordinarily inserted in such cases, but such language is too clear to admit of a doubt of the real meaning. The clause in question seems to have been taken from the English carriers' Act * * *"

By reason of the above the decree of the District Court was reversed, and the case remanded to that Court, with directions to assess the value of the libellant's goods, and to enter a decree in conformity with the opinion of that court.

Other cases holding that the undisclosed intention is immaterial in the absence of mistakes, fraud and the like, and that the law imputes to a person an intention corresponding to the meaning of his words and act are as follows: *American Lumber & Mfg. Company* v. *Atlantic Mill & Lumber Co.* (C. C. A. Pennsylvania), 290 Fed. 632. If its words judged by a reasonable standard manifest an intention to agree in regard to the matter in question, that agreement is established and it is immaterial what may be the real, but unexpressed, state of his mind on the subject. 17 *Corpus Juris Secundum,* page 361, 362; *Zurich General Accident & Lia. Co.,* 22 Pac. (2d) 572, 573; *Chicago Bank & Commerce* v. *Craft,* 259 Ill. App. 295. Neither is a mental assent to the promises in a contract essential. *Preston* v. *Howell,* 257 N. W. 415, A. L. R. 1140.

Accordingly, we submit that the court should construe the contracts sued upon most favorably to the seamen, *i. e.,* the petitioners, and hold that they are entitled to recover on the contracts sued upon.

Point Three.

Acts and circumstances of March 11, 1938, involving another and different contract on other and different ships occurring some three months prior to the time the contracts in question were executed cannot and should not be considered in the construction of plain, unambiguous and clear language of the contracts sued upon, the Maritime Commission order of September 23, 1937, not being applicable.

The contracts sued upon having been written by respondent and presented to petitioners, the petitioners had a right to rely on the plain meaning of the words Spanish Ports, and it seems highly unfair, unjust and contrary to the established principles of admiralty to impose a strained and highly technical meaning upon the words Spanish Ports and separate what is ordinarily Spanish Ports into many cate-

gories and declare them fairly ambiguous as the Circuit Court of Appeals has done in these cases.

Assuming, however, for argument's sake only, that Spanish Ports may seem fairly ambiguous nevertheless the acts and circumstances that occurred on March 11, 1938, some two months, or more, prior to the time the contracts sued upon were entered into can not and should not be considered in the construction, if any construction be needed, of the contracts in question, for the following reasons: The evidence in this case (Tr. pp. 93, 99, 101 and 103) clearly shows that on March 11, 1938, the SS OLEAN departed from Boston to Santa Cruz de Tenerife, Spain, and that at that time the members of the crew regularly employed on that vessel insisted on the bonus of Fifty ($50) Dollars to each member of the crew if their vessel entered such ports which the company refused to pay. Thereafter *another crew* joined the OLEAN under another and *different contract* and not on exactly the same kind of contract as the one sued upon in these cases. (Tr. p. 103). Therefore, the record being clear and undisputed that the contract on March 11, 1938, with reference to the OLEAN being different from the ones sued upon, acts and circumstances with reference to that contract (March 11, 1938) after so much time has elapsed, during which time conditions might have changed as they actually did, the theatre of war enlarged, the propensity of the civil war exceedingly intensified, the dangers becoming more acute and the type of cargo that this vessel was carrying, *i. e.*, crude oil and other derivatives to a refinery—war material—the application of what may have transpired on March 11, 1938, to the contracts sued upon is unwarranted in law and establishes a dangerous precedent in construction of contracts, has the effect of impairing the obligation of a contract and opens a wide avenue of fraud and deceit to those who may seek to escape their obligation under a plainly written contract.

Neither has the Order of the Maritime Commission of March 23, 1937, any relevancy to the question involved because the contracts of the parties particularly limits the application of the Maritime Commission Order only as to *the time during which this contract is to exist.* At any rate, should the Maritime Commission Order have any relevancy whatsoever and have the effect of substituting the wording of that order to the language of the contract involved, then under the facts petitioners are entitled to recovery since it is obvious that under the Maritime Commission Order the mere entrance of the vessels into territorial waters of Spain entitles them to their bonus. It can not be denied that when the vessels in question entered into the Straits of Gibraltar, proceeded in the Mediterranean to ports in Genoa, Italy, they had to pass between the Spanish mainland and the Balearic Islands, and upon their return trip to Canary Islands, they had to follow the same route, so they are, therefore, entitled to their bonus under that order. Moreover the entry of the vessels into the Port of Santa Cruz de Tenerife, Canary Islands, Spain, also territorial waters of Spain, they are unquestionably entitled to the war bonus under such provision, if such order could be held applicable.

To permit respondent a rescission or reformation of the contracts at the present time on the ground that the words "Spanish Ports" are fairly ambiguous is further unjustified because the parties cannot be restored to the *status quo* before they entered into the contracts. The very idea of rescinding a contract or reforming it implies that what has been parted with shall be restored on both sides. Releasing one party from his part of the agreement and excusing him from making the other party whole will not seem agreeable to reason or justice. Hence the general rule is that the parties who wish to rescind or reform an agreement

must place the opposite party in *status quo,* which in this instance can not be done since petitioners have fully executed their part of the contract. *Pan American Petroleum & Transport Co.* v. *United States,* 273 U. S. 456; 71 L. Ed. 734, 47 S. Ct. 416; *Gay* v. *Alter,* 102 U. S. 79, 26 L. Ed. 48; *Young* v. *Bradley,* 101 U. S. 782, 25 L. Ed. 1044; *American Jurisprudence,* Volume 12, page 1031, *Red Cross Line* v. *Atlantic Fruit Co.,* 264 U. S. 109, 44 S. Ct. 274.

The District Court in its opinion adequately and properly holds that the contracts sued upon are plain, clear and unambiguous and that the order of the Maritime Commission, or any other contracts entered into months before the present contracts can not under the circumstances and should not be considered in the construction of the contracts in question.

POINT FOUR.

A court sitting in admiralty has no power or authority to reform or rescind a written contract.

It has been well established that an Admiralty Court while exercising its jurisdiction upon equitable principles, has not the characteristic powers of a court of equity. A court of admiralty cannot entertain a suit, although relating to maritime matters, for an injunction, *relief in case of mistake,* to declare or enforce a trust or an equitable title, reach and apply assets of a debtor, *or set aside an instrument,* nor can an admiralty court take cognizance of a suit *or a defense seeking reformation of a maritime contract.* A maritime court has not general equity jurisdiction, with respect to the exercise of *equitable powers to construe a contract as to reform a maritime agreement,* the decisions being uniform that an admiralty court has no such jurisdiction. The doctrine has been reaffirmed as late as *Rice* v. *Charles Dreifus Co.,* 98 F. (2d) 80, C. C. A., citing *United*

Transportation Co. v. *New York and Baltimore Railroad,* 185 Fed. 386, which contains an excellent collation of authorities on the point.

It is true, no doubt, that the admiralty has no jurisdiction over a libel to reform a written instrument. We respectfully submit that the court's action in this case was in effect a reformation of the instruments as written between the parties on June 5th and June 17th, 1938, respectively. Justice Storey so held in *Andrews* v. *Essex, Fire & Marine Insurance Co.* (1822), 3 Mason 6, Fed. Cases, No. 374, and this holding has been again and again approved to this time. The chief authority in the Supreme Court upon the incapability of an admiralty court to entertain equitable causes of action has been established in *The Eclipse,* 135 U. S. 599; 10 S. Ct. 873, 34 L. Ed. 269.

In *United Transportation Company* v. *New York* and *Baltimore Railroad,* 185 Fed. 386, Justice Learned Hand of the Second Circuit refused to consider on the merits a cross-libel depending upon the reformation of a contract before any relief could be granted.

From the cases hereinabove set out, it is respectfully submitted that a court sitting in Admiralty lacks jurisdiction to reform a maritime agreement and by reason thereof the judgment of the District Court should be in all things affirmed.

In accord are:

Simmons Transp. Co. v. *Alpha Portland Cement Co.,* 286 Fed. 955;

Williams v. *Providence Washington Ins. Co.,* 56 Fed. 159;

Benedict on Admiralty, Vol. 1, Sec. 70, p. 95, (Fifth Edition);

Corpus Juris Secundum, Vol. 2, pp. 101, 102;

Benedict on Admiralty, Sixth Edition, Vol. 1, p. 128,

wherein it is held that Admiralty has no jurisdiction to reform a policy, also,

Andrews v. *Essex Fire & Marine Insurance Co.* (1822), 3 Mason 6, Fed Cases No. 374 (C. C. A. Mass);

or to take cognizance of a mutual mistake.

If on the other hand our Admiralty Court has such jurisdiction and the term "Spanish Ports" may be held to be fairly ambiguous then this cause should be remanded to the District Court for further evidence on this point in view of the District Court's advising the parties during the trial of this cause that he would hold them to their contracts. That such procedure is proper is supported by the following authorities:

Calmar S. S. Corp. v. *Chas. W. Taylor,* 58 S. Ct. 641;
Smith v. *Elmer Wood Transp. Co.,* 103 Fed. 685;
The Carbonero (Mass.), 106 Fed. 329 (C. C. A., 5th Cir.);
The Glide, 72 Fed. 200.

POINT FIVE.

It is respectfully submitted that the petition should be granted.

MANDELL & WRIGHT,
Proctors for Petitioners.

HALL ETTER,
Counsel.
Dated: Houston, Texas, April 8, 1941.

(3897)

Supreme Court of the United States

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, [illegible]

vs.

SOCONY-VACUUM OIL COMPANY

RESPONDENT'S REPLY [illegible]
WRIT OF CERTIORARI

For the Respondent

INDEX

	Page
CONCISE STATEMENT OF MATTER	1
SUMMARY OF ARGUMENT	2
ARGUMENT CONCERNING JURISDICTION	3
ARGUMENT THAT DECISION BELOW CORRECT	5
PRAYER	8

INDEX OF AUTHORITIES

Page

Benedict on Admiralty (5th Ed.), Sec. 551 4

Calderon vs. Atlas Steamship Co., Ltd., 170 U. S. 272, 18 S. Ct. 588, 42 L. Ed. 1033 4

Chicago, etc., R. R. vs. Denver, etc., R. R., 143 U. S. 596, 12 S. Ct. 479, 36 L. Ed. 277 6

Chicago vs. Sheldon, 76 U. S. 50 (9 Wall. 50), 19 L. Ed. 594 7

Dist. of Col. vs. Gallaher, 124 U. S. 505, S. Ct. 585, 31 L. Ed. 526 6

Doherty vs. Hill, 144 Mass. 468, 11 N. E. 581 5

46 Harv. Law Rev. 226, 241-253 5

43 Harv. Law Rev. 33, 51-53 5

Layne & Bowler Corporation vs. Western Well Works, 261 U. S. 387, 43 S. Ct. 422, 67 L. Ed. 712 4

Magnum Import Co. vs. Coty, 262 U. S. 159, 67 L. Ed. 922 4

Nash vs. Towne, 5 Wall. 689, 43 S. Ct. 531, 18 L. Ed. 527 at 529 6

Nottingham and Wrenn Co. vs. American Coal Exporting Company, Inc., 36 F. (2d) 982 7

O'Brien vs. Miller, 168 U. S. 297, 18 S. Ct. 140, 42 L. Ed. 469 at 473 ..... 6, 8

Pope vs. Nickerson, Fed. Cas. 11, 274 8

Rice vs. Chas. Dreifus Co., et al, 96 F. (2d) 80 8

INDEX OF AUTHORITIES

Page

Rules of Supreme Court, Rule 38, Sections 2 and 5, b 2

Southern Power Co. vs. North Carolina Public Service Co., 263 U. S. 508, 44 S. Ct. 164, 68 L. Ed. 413 4

The Eclipse, 135 U. S. 599, 10 S. Ct. 873, 34 L. Ed. 269 4

The Hiram, 14 U. S. 440 (1 Wheat 440), 4 L. Ed. 131 8

The John Twohy, 255 U. S. 77, 41 S. Ct. 251, 65 L. Ed. 511 4

Topliff vs. Topliff, 122 U. S. 121, 7 S. Ct. 1057, 30 L. Ed. 1110 7

Union Pacific Railway Co. vs. Chicago, etc., R. R. Co., 163 U. S. 564, 16 S. Ct. 1173, 41 L. Ed. 265 6

United States vs. Cornell Steamboat Company, 202 U. S. 184, 26 S. Ct. 648, 50 L. Ed. 987 8

United States vs. Utah, etc., Stage Co., 199 U. S. 414, 26 S. Ct. 69, 50 L. Ed. 251 6

Virginia vs. West Virginia, 238 U. S. 202, 236, 35 S. Ct. 795, 59 L. Ed. 1272, 1278 6

Watts vs. Camors, 115 U. S. 353, 6 S. Ct. 91, 29 L. Ed. 406 8

Wigmore on Evidence (1st Ed.), Secs. 2462, 2465, and 2470 5

Williston on Contracts (1st Ed.), Secs. 613, 623, and 629 5

Winona, etc., Land Co. vs. Minnesota, 159 U. S. 526, 16 S. Ct. 83, 40 L. Ed. 247 6

Supreme Court of the United States

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, ET AL.,
Petitioners,

vs.

SOCONY-VACUUM OIL COMPANY, INC.,
Respondent.

RESPONDENT'S REPLY BRIEF TO PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Concise Statement of the Matter

The opinion of the Court below is reported in 116 F. (2d) 8, and 1941 A.M.C. 58. The Findings of Fact and Conclusions of Law of the Trial Court are not reported but are set forth in the Transcript below, pages 32 to 37.

The controversy between the parties centered upon the interpretation of a contract entered into by and between the respondent and the National Maritime Union, of which petitioners are members. The evidence was without material dispute, and it is correctly and completely set forth in the opinion of the Court below. This Honorable Court is respect-

fully referred to that opinion for a statement of the entire case.

Upon the basis of the opinion of the Court below, respondent respectfully suggests that there is no basis for the allowance of a writ of certiorari under the rules of this Court, particular reference being made to Rule 38, Section 5, b, and the cases cited in Rule 38, Section 2. There is no question here of public importance, no conflict of decisions, and the principles of law controlling the decision of the Court below are the settled and familiar ones governing the interpretation of contracts. The judgment below merely decides questions of fact peculiar to the private contract entered into by the respondent with a representative of petitioners herein. The subject matter of the contract was of no public importance.

Summary of Argument

No grounds exist for the grant of a writ of certiorari, under the rules of this Court, since it is apparent from the opinion of the Court below that the Court was merely applying general rules governing the interpretation of contracts, that its application of these rules in no way conflicted with the general rules or decisions of other Circuit Courts or of this Honorable Court, that its application of the rules of contract turned upon its findings of fact made upon the undisputed evidence, all questions herein being merely fact questions between the parties to a private contract without public importance.

Secondly, respondent respectfully submits that the facts underlying the decision of the Court below were undisputed and uncontradicted, that the application of the general rules of interpretation of contracts to these facts by the Court below was manifestly right, and that the Trial Court was obviously confused in its view of the facts and of the rules of law governing the interpretation of the contract at issue and

its decision was obviously wrong and in need of correction by the Circuit Court.

Argument Concerning Jurisdiction

Respondent feels that argument with respect to the petition for writ of certiorari is manifestly unnecessary to support its position that no ground exists under the rules of this Honorable Court for the allowance of the writ, and respondent files its reply brief in order to assure the Court of its conviction that the Court below was correct in every respect and to evidence respondent's abiding interest in the case rather than from any fear that this Honorable Court can be misled as to any grounds existing for its assuming jurisdiction by granting its writ of certiorari.

An examination of the opinion of the Court below shows that the controversy existing here is one involving a particular contract between private parties, in which the public has no interest and which dealt with a particular set of circumstances no longer existing. It accordingly follows that the subject matter of the controversy is one not of public importance, and it is obvious that the petitioners here seek to have another hearing rather than to correct any misapplication of settled rules of law or any conflict of decisions. Briefly put, the Court below held that the contract between the parties was ambiguous with respect to the ports of call embraced within the contract (i. e., one term of the contract was ambiguous), so that under general rules of contract law it was proper to consider the evidence concerning the circumstances surrounding the execution of the contract and the interpretation placed upon the contract by the parties themselves when the question was first raised whether the contract was intended to cover the port of Santa Cruz de Tenerife. The Court then examined the facts as disclosed by the undisputed evidence and found that under these facts the contract did not extend to cover this port, and was not

intended to cover the port, and accordingly held that the petitioners' claims were without foundation in fact and in law.

This Honorable Court has held that where only questions of fact are involved, such as here, this Court will not grant certiorari. Southern Power Co. vs. North Carolina Public Service Co., 263 U. S. 508, 44 Sup. Ct. 164, 68 L. Ed. 413. Furthermore, this Honorable Court has held in Layne & Bowler Corporation vs. Western Well Works, 261 U. S. 387, 67 L. Ed. 712, and Magnum Import Co. vs. Coty, 262 U. S. 159, 67 L. Ed. 922, that its jurisdiction will not be used to grant the party defeated in the Circuit Court of Appeals another hearing.

Obviously the allegation in the petition for writ of certiorari here that there is a conflict between the decision of the Court below and that of this Court in The Eclipse, 135 U. S. 599, 10 S. Ct. 873, 34 L. Ed. 269, and Calderon vs. Atlas Steamship Co., Ltd., 170 U. S. 272, 18 S. Ct. 588, is without foundation. In the two cases cited this Court held that a Court of Admiralty could not entertain what was in effect a bill in equity and sit as an equity court. Here the Court below makes no pretentions even to exercise equitable powers, simply holding, under well recognized rules of law, that in interpreting the contract between the parties the circumstances surrounding the execution of the contract and the practical interpretation placed upon it by the parties themselves were controlling in arriving at the meaning of the contract, particularly since the words used were ambiguous and susceptible of different meanings. No attempt is made to reform the contract or exercise equitable principles, the admiralty court merely acting in accordance with settled rules of practice in appeals in admiralty in re-examining the evidence, as was its duty. Benedict on Admiralty (5th Ed.), Section 551; The John Twohy, 255 U. S. 77, 65 L. Ed. 511, 41 S. Ct. 251.

It is respectfully submitted that to grant the petition for writ of certiorari in this case would be giving basis for a criticism such as was made by the authors in the articles Business of the Supreme Court at the October Term, 1928, 43 Harvard Law Review 33, 51-53, and Business of the Supreme Court at the October Term, 1931, 46 Harvard Law Review 226, 241-253, by Messrs. Frankfurter and Landis, where the Court was criticized for granting its writ where no more than the particular facts were involved and the principles of decision were clear.

(B) The Decision of the Circuit Court of Appeals Was Clearly Correct, and Should Not Be Disturbed

It is of course a general rule of law that where the written contract is ambiguous as to one of its terms that the Court in interpreting the contract is entitled to be put in the position of the parties at the time of its making, and consider the circumstances of the execution and the subject matter with which the parties were dealing in order to reach a correct understanding of the meaning of the contract. While this rule has been stated in different ways, the rule itself is clearly settled law with respect to the interpretation of contracts. As it is put in Williston on Contracts, 1st Ed., Section 302:

> "But evidence of the circumstances under which a writing was given is always admissible to aid the Court in determining the true meaning of the words in the document."

See also Wigmore on Evidence, 1st Ed., Sections 2462, 2465, and 2470, and Williston on Contracts, 1st Ed., Sections 613, 623 and 629.

As the matter was succintly put by Mr. Justice Holmes when sitting in the Massachusetts Court,

> "The words used must be translated into things and facts." (Doherty vs. Hill, 144 Mass. 468, 11 N. E. 581).

See also this Honorable Court in Chicago, etc., R. R. vs. Denver, etc., R. R., 143 U. S. 596, 36 L. Ed. 277, where it was said:

> "There can be no doubt whatever of the general proposition that, in the interpretation of any particular clause in the contract, the Court is not only at liberty but required to examine the entire contract, and may also consider the relations of the parties, their connection with the subject matter of the contract, and the circumstances under which it was signed."

The Court is also respectfully referred to Nash vs. Towne, 5 Wall. 689, 18 L. Ed. 527 at 529; Virginia vs. West Virginia, 238 U. S. 203, 236, 59 L. Ed. 1272, 1278; Winona, etc., Land Co. vs. Minnesota, 159 U. S. 526, 40 L. Ed. 247; Union Pacific Railway Co. vs. Chicago, etc., R. R. Co., 163 U. S. 564, 41 L. Ed. 265; United States vs. Utah, etc., Stage Co., 199 U. S. 414, 50 L. Ed. 251; and O'Brien vs. Miller, 168 U. S. 297, 42 L. Ed. 469 at 473.

An examination of the opinion of the Court below indicates that it was merely complying with this general rule of law and deciding that under the facts here the contract did not cover the port of Santa Cruz de Tenerife, and that the Court ~~below~~ was in error in apparently refusing to consider the genesis of the contract, which clearly showed that the port in controversy was not embraced within the ports for entry into which a bonus would be paid.

The Court below also followed the familiar rule of looking to the conduct of the parties with relation to the contract as a proper aid in interpreting ambiguous language. See Williston on Contracts, Section 623, for a statement of the rule, and this Honorable Court in District of Columbia vs. Gallaher, 124 U. S. 505, 31 L. Ed. 526, where the Court said:

> "We think that the practical construction which the parties put upon the terms of their own contracts and

> according to which the work was done, must prevail over the literal meaning of the contract . . ."

and Topliff vs. Topliff, 122 U. S. 121, 30 L. Ed. 1110; Chicago vs. Sheldon, 76 U. S. 50, 19 L. Ed. 594, and Nottingham and Wrenn Co. vs. American Coal Exporting Company, Inc., 36 F. (2d) 982.

Here the contracts were entered into *after* the identical contracting parties had agreed between themselves that a contract identical with those here in suit did not embrace the port of Santa Cruz de Tenerife, when in March, 1938, the exact point was raised on the sailing of the SS Olean from Boston bound for the port of Santa Cruz de Tenerife. (See the opinion below and Record, pages 101, 102, 103, 104).

There is no evidence to support any of the criticisms of the opinion of the Court below made on page 7 of the petitioner's brief.

Respondent therefore respectfully submits that, under the undisputed evidence herein, the Circuit Court correctly held that the contract did not embrace the port of Santa Cruz de Tenerife. It is obvious from the remarks made by the Trial Court in the course of the trial, Record, pages 78, 79, and 157, and from paragraph 2 of the Trial Court's Conclusions of Law in lumping together the genesis of the contracts here with an utterly different contract made by some members of the National Maritime Union with the West African Line (R., p. 37) that the Trial Court was confused in his recollection of the general rules of law governing such cases and erroneously disregarded the undisputed evidence in the case.

Since the Circuit Court of Appeals has correctly summarized the undisputed evidence and has correctly applied the general principles of law governing the interpretation of contract in such cases, it is submitted, respondent will not burden this Court with further argument on this point.

Finally, the Court below made no attempt to reform the contracts here. Certainly there is no attempt on the part of the Court below to sit as a Court of equity rather than as one of admiralty. However, the Court of admiralty has from time immemorial maintained its right to exercise powers of equity in adjudicating cases properly before it, as this one was. See Watts vs. Camors, 115 U. S. 353, 29 L. Ed. 406; The Hiram, 14 U. S. 440, 4 L. Ed. 131; United States vs. Cornell Steamboat Company, 202 U. S. 184, 50 L. Ed. 987; Pope vs. Nickerson, Fed. Cas. 11, 274; O'Brien vs. Miller, 168 U. S. 287, 42 L. Ed. 469. The Court is also respectfully referred to the cases showing that in libels for wages, such as this one, the Court of Admiralty has long exercised wide discretionary powers, collected in Rice vs. Chas. Dreifus Co., et al, 96 F. (2d) 80 (2, C.C.A., 1938).

Of course this question is entirely different from one where an attempt is made to bring a bill in equity in the admiralty court, such as was attempted in The Eclipse, *supra*. However, since the question is not raised by the Court below, respondent respectfully refrains from further argument of so plain a proposition.

WHEREFORE, premises considered, respondent respectfully submits that the decision of the Circuit Court of Appeals was correct, made upon the undisputed evidence, and that the case is one in which under the rules of this Court no ground exists for the issuance of its writ of certiorari. Respondent therefore respectfully prays that the petition be denied.

Respectfully submitted,

ROBERT EIKEL, JR.,
Proctor for Respondent, and Counsel.